Supreme Court, U.S.
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In The
Supreme Court of the United States

RAYMOND GEDDIE,

Petitioner,

vs.

STATE OF ALABAMA,

Respondents.

On Petition For A Writ Of Certiorari
To The Court of Criminal Appeals of Alabama

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

I. Whether the Court of Criminal Appeals of Alabama and the Trial Court below committed reversible error when those Courts denied Petitioner's Motion to Suppress Evidence seized and obtained by police officers as a result of an illegal and unconstitutional entry into Petitioner's home without a warrant or consent and without probable cause and/or the presence of those exigent circumstances necessary to justify the entry. The Petitioner submits that the decisions of the Courts below are contrary to the Fourth and Fourteenth Amendments to the United States Constitution and relevant decisions of this Court.

II. Whether the Court of Criminal Appeals of Alabama and the Trial Court below committed reversible error when those Courts denied Petitioner's Motion to Suppress Evidence seized and obtained by police officers in violation of the Fourth and Fourteenth Amendments to the United States Constitution and found that Petitioner's wife voluntarily consented to a search of Petitioner's residence contrary to relevant decisions of this Court. The Petitioner contends that the search and seizure does not qualify as a search incidental to arrest and that the totality of the circumstances and evidence presented at his Motion to Suppress hearing below clearly reveals that a person exercising "reasonable caution" could not find the consent to search his residence "voluntary."

PARTIES TO THE PROCEEDINGS

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PETITION FOR A WRIT OF CERTIORARI

Petitioner, Raymond Geddie, petitions this Court for a Writ of Certiorari to review a Judgment and Order of the Court of Criminal Appeals of Alabama affirming his State Court conviction for the offense of Trafficking Cannabis and upholding the Trial Court's denial of a Motion to Suppress Evidence allegedly obtained by police in violation of the Fourth and Fourteenth Amendments to the United States Constitution. Petitioner contended at trial that the police entry into his residence was illegal and without his consent; that the search conducted by police was broad and did not qualify as incidental to arrest and, in any event, a consent to search executed by his wife could not be voluntary in her intoxicated state.

OPINIONS BELOW

1. The Order of the Circuit Court of Tallapoosa County, Alabama in the case of State of Alabama vs. Raymond Geddie, CC96-192 denying Petitioner's Motion to Suppress Evidence seized and obtained by police in violation of the Fourth Amendment to the United States Constitution was not reported. The Order was dated June 18, 1997 and entered June 23, 1997. The Order appears at pp.37-42 of the record and as Appendix A, p. 1.

2. The Judgment of Conviction and sentence by the Circuit Court of Tallapoosa County, Alabama in State of Alabama

vs. Raymond Geddie, CC96-192, dated June 10, 1998, was not reported. The Judgment of Conviction, sentence and imposition of fines appears at pages 43 and 44 of the record and at Appendix B, p. 8.

3. The Memorandum Opinion of the Court of Criminal Appeals of Alabama affirming the conviction, sentence and imposition of fines by the Circuit Court, and adjudicating the Fourth Amendment Constitutional issues in Raymond Geddie vs. State of Alabama, CR-97-1873 was not reported. The opinion is dated December 18, 1998, and appears at Appendix C, p. 11.

4. The Order of the Court of Criminal Appeals of Alabama in Raymond Geddie vs. State of Alabama, CR-97-1873, overruling Petitioner's Application for Rehearing and denying Petitioner's Motion to Review and Include Additional Facts Under Rule 39(k), Alabama Rules of Appellate Procedure, was not reported. The Order is dated January 15, 1999 and appears at Appendix D, p. 17.

5. The Order of the Supreme Court of Alabama granting the State Petition for a Writ of Certiorari to the Court of Criminal Appeals of Alabama in Supreme Court case Exparte Raymond Geddie: (In Re Raymond Geddie vs. State of Alabama) Sup.Ct.No. 1980660 was not reported. The Order is dated August 31, 1999 and appears at Appendix E, p. 18.

6. The Order of the Supreme Court of Alabama, dated June 30, 2000, denying the Petition for a Writ of Certiorari to the Court of Criminal Appeals of Alabama, without opinion, was not reported. The Order appears at Appendix F, p. 19. The Supreme Court case is Exparte Raymond Geddie: (In Re Raymond Geddie vs. State of Alabama) Sup.Ct.No.1980660.

JURISDICTION

The Judgment of the Court of Criminal Appeals of Alabama adjudicating an issue presented under the Fourth Amendment to the United States Constitution was entered on December 18, 1998, Appendix C, p. 11. A rehearing was sought in the Court of Criminal Appeals of Alabama and denied on January 15, 1999, Appendix D, p. 17. A Petition for Writ of Certiorari to the Court of Criminal Appeals of Alabama was sought in the Supreme Court of Alabama and initially granted on July 16, 1999, Appendix E, p. 18. After review, the Supreme Court of Alabama denied the Petition for a Writ of Certiorari to the Court of Criminal Appeals of Alabama on June 30, 2000, Appendix F, p. 19. A rehearing was not sought in the Supreme Court of Alabama. The jurisdiction of this Court is invoked under 28 USC §1257.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

1. The Fourth Amendment, United States Constitution: The text of the Fourth Amendment to the United States Constitution appears at Appendix G, p. 21.

2. The Fourteenth Amendment, United States Constitution: The text of the Fourteenth Amendment to the United States Constitution appears at Appendix H, p. 22.

3. The statute under which Petitioner was prosecuted was 13A-12-231(l), Code of Alabama 1975. The text of the statute appears at Appendix I, p. 23.

STATEMENT OF THE CASE

The facts necessary to the questions now raised are stated as follows:

A. Course of Proceedings:

The Petitioner Raymond Geddie was a resident of the City of Tallassee, Alabama during the month of May 1996. On the evening of May 2, 1996, shortly after 8:00 p.m. Mr. Geddie was arrested inside his residence by police officers of the City of Tallassee, Alabama (R-33). Mr. Geddie was arrested by Tallassee police for an alleged Misdemeanor Assault upon his wife Dixie Geddie (R-33). Most of the factual background of this case is undisputed. It is undisputed that he was arrested

by the police officers without a warrant (R-20). It is also undisputed that he was arrested in his residence and no evidence was offered indicating that the police had probable cause to make an arrest prior to the entry into his residence (R-25-55). Indeed, Chief Paul Yarborough of the Tallassee Police Department testified that he had never heard of Mr. and Mrs. Geddie prior to this occasion (R-31). Moreover, all parties agree that Mrs. Dixie Geddie did not seek an arrest warrant or the arrest of her husband and the State has never contended that she consented to the police entry into the residence. The State did not contest these facts and all material witnesses agreed that Mrs. Geddie's appearance did not reveal any physical signs indicating that she had been assaulted. The Trial Judge reached a similar conclusion (R-153-154). Moreover, all parties agreed that Mrs. Geddie had been drinking alcohol on the night of May 2, 1996 and was, in fact, intoxicated (R-54). She was so severely intoxicated that she was rushed to a local hospital by ambulance (R-144). All parties appear to agree that her state of intoxication was severe, with an alcohol reading of .289. Indeed, the Judge concluded that she was "roaring drunk" (R-146).

The controversy over this arrest, search and seizure at trial centered around two (2) alleged consents. The police officers contend that Mr. Geddie gave police consent to enter his residence on May 2, 1996, where they found Mrs. Geddie in bed "unconscious" and marijuana in "plain view." The Petitioner contended at trial that Chief Yarborough's testimony does not disclose a consent to entry (R-45-46). The police contend that, once inside, Mrs. Geddie, now aroused

from unconsciousness, identified the marijuana as the property of Mr. Geddie, executed a consent to search the residence and was sent to the hospital by ambulance (R-35-38). The police found approximately ten (10) pounds of marijuana in a distant bedroom of the house and approximately $10,000 in cash. It was undisputed that the evidence was not in plain view, but in a closet, duffel bag, a drawer and a footlocker. Although the police had earlier arrested Mr. Geddie for an alleged Misdemeanor Assault committed against the person of Mrs. Dixie Geddie, they immediately arrested him for the offense of Trafficking Cannabis (R-33, 41). On September 13, 1996 the Grand Jury of Tallapoosa County, Alabama indicted Petitioner for the offenses of Assault Third Degree in violation of 13A-6-22, Code of Alabama 1975, Criminal Mischief Third Degree in violation of 13A-7-23, Code of Alabama 1975[1] and Trafficking in Cannabis in violation of 13A-12-231, Code of Alabama 1975 (C-8). All three charges resulted from alleged incidents that occurred on the evening of May 2, 1996. The charge of Criminal Mischief Third Degree evidently resulted from Mr. Geddie's protest of police conduct. The police allege that he destroyed the rear window of a police car at the time he was taken to jail (C-2).

On December 12, 1996 Petitioner's trial counsel filed a

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[1]This charge is not before the Court. The Petitioner entered a guilty plea to the charge in the Circuit Court of Tallapoosa County, Alabama. The assault charge was a nolle prosse by the State. The only charge before this Court is Trafficking Cannabis.

Motion to Suppress Evidence of any type found by police in Petitioner's residence on May 2, 1996. Petitioner alleged that the police entry into his residence and resulting arrest, search and seizure of marijuana and other evidence, was in violation of the rights secured to him under the Fourth Amendment to the United States Constitution (C-19-20). He also filed a Motion to Suppress all statements that he had made to police subsequent to his arrest (C-22-23). He contended that the statements were induced by police promises of leniency.

On June 7, 1997 the Circuit Court of Tallapoosa County, Alabama held a hearing on the Petitioner's Motion to Suppress Evidence and Statements (R-25-211). After hearing testimony, the Court granted Petitioner's Motion to Suppress all Statements given to police after his arrest, but denied Petitioner's Motion to Suppress the Evidence obtained by police from his residence on the evening of May 2, 1996. As to the issues raised concerning statements made subsequent to his arrest, the Court found that they were induced by police suggestions of leniency and suppressed them. As to the marijuana and $10,000 cash taken as a result of the search of his residence on May 2, 1996, the Court found that Petitioner consented to the police entry into his residence; that Mrs. Dixie Geddie, Petitioner's wife, "voluntarily" consented to a search of the residence after police discovered marijuana in "plain view"; and that the seizure of evidence did not result in a violation of the Fourth Amendment to the United States Constitution. The Court found that Mrs. Geddie was clearly intoxicated and probably made confessions concerning her own involvement in this criminal activity, but concluded that

a totality of the evidence revealed the voluntary nature of her consent to search (C-37-42 - App. A, p. 1)[2]. The Petitioner sought to preserve the Fourth Amendment issues for appeal. He decided to present the transcript of the Suppression Hearing as evidence at his trial for purposes of review on appeal.

On June 10, 1998 the Petitioner appeared for trial. At the call of his case, the Petitioner entered a plea of guilty to the charge of Criminal Mischief Third Degree. Thereafter, the District Attorney moved to Nolle Prosse the charge of Assault Third degree (C-43-44 - App. B, p. 8). The remaining charge of Trafficking Cannabis, in violation of 13A-12-231, Code of Alabama 1975, was submitted to the Court for a trial determination of guilt or innocence based on the evidence presented at the Motion to Suppress hearing (C-43-44)(R-213-219). The Petitioner waived his rights to a trial by jury and the Court found Petitioner guilty of Trafficking Cannabis in violation of 13A-12-231(l), Code of Alabama 1975. The Petitioner waived a presentence report. The Circuit Court sentenced Petitioner to a term of ten (10) years imprisonment and directed that Petitioner serve a minimum of three (3) years imprisonment. The Court imposed a fine of Twenty-five Thousand Dollars ($25,000.00), a victim compensation assessment and cost (R-213-219)(C-43-44 - App. B, p. 8).

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[2]The District Attorney apparently took this finding seriously. Mrs. Dixie Geddie was later charged with Trafficking Cannabis in violation of 13A-12-231(l) Code of Alabama 1975, which charge resulted from her consent, allegedly given "voluntarily."

Petitioner, thereafter, gave notice of appeal to the Court of Criminal Appeals of Alabama. On December 18, 1998, the Court of Criminal Appeals of Alabama affirmed the Judgment of Conviction, sentence and fines imposed by the Circuit Court. The Court issued an Opinion finding that Petitioner had not been denied rights secured to him under the Fourth and Fourteenth Amendments to the United States Constitution, Appendix C, p. 11.

Petitioner's request for rehearing was denied by the Court of Criminal Appeals of Alabama on January 15, 1999, Appendix D, p. 17. The Supreme Court of Alabama granted a Petition for a Writ of Certiorari to the Court of Criminal Appeals of Alabama on July 16, 1999, Appendix E, p. 18. After review, the Supreme Court denied the Petition, without Opinion, on June 30, 2000, Appendix F, p. 19. This Petition is filed within ninety (90) days of the Judgment or Order of the Supreme Court of Alabama denying a Petition for Writ of Certiorari to the Court of Criminal Appeals of Alabama.

B. Specific facts necessary for a review of the constitutional issued involved:

The Petitioner, Raymond Geddie, was arrested on May 2, 1996 for, among other things, the offense of trafficking marijuana, contrary to 13A-12-231(1), Code of Alabama 1975. He was arrested for said offense as a result of a warrantless search and seizure of approximately ten (10) pounds of marijuana and $10,000 cash at his residence on the night of May 2, 1996. The arrest was followed by an arrest warrant issued on May 4, 1996 (C-5-6). The Grand Jury of Tallapoosa

County, Alabama issued an indictment against Petitioner on September 13, 1996 (C-7-8). Mr. Geddie, thereafter, filed a Motion to Suppress the evidence seized at his residence and a Motion to Suppress any statements that he made subsequent to his arrest (C-19-23). The Circuit Court of Tallapoosa County, Alabama conducted a hearing on the motions and issued an Order granting Mr. Geddie's Motion to Suppress all statements he made to the police but denying the Motion to Suppress the evidence seized. The Court concluded that the marijuana was not seized as a result of an illegal search and seizure but was, to the contrary, taken as a result of a legally effective consent to search the premises voluntarily given and executed by Defendant's wife, Dixie Geddie (C-37-42 - App. A, p. 1). The Court's Order was based on testimony and evidence presented at a Motion to Suppress hearing. The Court's Order did not address any issue concerning searches performed incidental to an arrest. The material testimony and evidence appears in the record of a hearing conducted in June 1997. The material testimony and other evidence appears as follows:

Chief Randy Yarborough was called as the first witness for the State and testified as follows:

That he is the Chief of Police for the City of Tallassee (R-25). On May 2, 1996, Mrs. Dixie Geddie called the Tallassee Police Department and reported an incident of domestic violence at her home. Police officers were then dispatched to the home of Petitioner and Mrs. Geddie. Upon arrival, Mrs. Geddie saw the police in the front yard and informed the police officers that there was no problem (R-49-50). They left the premises (R-42). Chief Yarborough did not feel that the officers thoroughly

investigated the complaint and went to the premises himself (R-26-27). Investigator Archie Schnuelle of the Tallassee Police Department met him at the Geddie home shortly before 8:00 p.m. (R-28). Mr. Geddie met him out in front of the house. Chief Yarborough told Mr. Geddie that he needed to talk with Mrs. Geddie (R-29-30). Chief Yarborough had no prior information about any drugs at the home (R-31). Chief Yarborough testified that his entry onto the premises was with consent. He went to a bedroom in the rear of the house (R-31). Mrs. Geddie was in bed and appeared to be unconscious but she was dressed (R-32). He thought she was asleep at first but after making attempts to wake her, called an ambulance (R-32-33). Chief Yarborough testified that Mrs. Geddie did wake up prior to the ambulance's arrival and stated that Mr. Geddie had hit her. Mr. Geddie was then arrested (R-33). Chief Yarborough testified that, at some point, Investigator Schnuelle directed his attention to a half-smoked marijuana cigarette in an ashtray in the bedroom (R-34-35). Although no Miranda warning appears to have been given, Chief Yarborough spoke with Mrs. Geddie and she responded to his questions (R-35). She stated that the marijuana cigarette belonged to her husband and further stated that there was more marijuana in another room. After questions, she executed a consent to search form (R-36). The State identified the consent to search as State's Exhibit 1 (R-36). A search was made of the house and ten (10) pounds of marijuana was found in various parts of the house. Also, $10,000.00 in cash and other evidence was seized (R-37-40). Mr. Geddie was then arrested on drug charges. However, on further examination

and cross-examination, Chief Yarborough admitted the following:

Chief Yarborough admitted that other Tallassee police officers had first responded to the call of Mrs. Geddie concerning the domestic violence complaint. He also admitted that the officers had talked to her outside in the front yard and she told them that there was no problem (R-42). He then admitted that he and his investigative officers do not usually respond to domestic violence complaints (R-43). He also admitted that when he arrived at the Geddie house, Mr. Geddie was out front (R-45). Moreover, he does not think Mr. Geddie was present when the officer spoke to Mrs. Geddie. Although Chief Yarborough felt that his entry on the premises was with consent, he testified that he does not recall what words he spoke to Mr. Geddie and that Mr. Geddie may have told him that Mrs. Geddie was in the bedroom and could not see him (R-45). He further admitted that prior to speaking with Mrs. Geddie, he smelled alcohol on Mrs. Geddie and could tell that she had been drinking (R-46); he also testified that Mr. Geddie may not have been in the room when Mrs. Geddie allegedly signed a consent to search and may not have known that Mrs. Geddie consented to a search (R-38-39); Chief Yarborough testified that Mr. Geddie stated to Mrs. Geddie, at some point, "Dixie, you don't know what you are doing" (R-40); Moreover, he admitted that he would not have ordered a search of the premises if Mrs. Geddie had refused the consent to search (R-52). He also admitted that the police did not test Mrs. Geddie for marijuana use (R-52).

Mrs. Dixie Lee Geddie was called as a witness and testified

that she had drank alcohol and/or smoked marijuana on May 2, 1996 for most of the day. She began celebrating her birthday early. She had started drinking Crown Royal at about ten (10) o'clock a.m., changed to beer at a point and smoked some marijuana at approximately 2:00 p.m. to 3:00 p.m. She then started drinking again (R-85-89). She thinks she did call the police and make a domestic violence complaint, and later spoke to a police officer in her front yard (R-90). She told the police that everything was okay (R-91). Mrs. Geddie testified that she went back inside the house to the bedroom, drank more alcohol straight, passed out and woke up at a hospital. She testified that she did not remember anything between the time she passed out and the time she awoke at a hospital (R-91-94). She testified that she does not recall talking to a second group of police officers, telling the police that her husband knocked her out, seeing a paramedic, talking to the police about marijuana, being informed that the police found marijuana, signing any consent for the police to search for marijuana, being transported to a hospital or why she was in a hospital (R-121-125). She does remember telling a lady at a hospital that nothing was wrong with her and leaving the hospital walking (R-125-126). She testified that she did not sign a consent to search her home (R-127). She testified, however, that she does not know what she told police that night (R-128-129).

Ms. Michael Finley, Staff Coordinator of Medical Records at Tallassee Community Hospital, entered the medical records of tests performed on Mrs. Dixie Geddie on the night of May 2, 1996. The records showed her blood alcohol content at .289.

She testified that no sign of physical injury was noted (R-100-103). Mrs. Geddie left the hospital against medical advice at 9:50 p.m. and police were notified at 9:55 p.m.

Ms. Sonya Smith was called and testified that she is a paramedic with Tallassee Ambulance Service and was so employed on May 2, 1996 (R-132). She does remember being called to the Geddie home and conducting an examination of Mrs. Dixie Geddie on May 2, 1996. Police officers were on the scene when she arrived. Mrs. Geddie was sitting in the middle of the bed. She was upset and also intoxicated (R-133). Mrs. Geddie told her that her husband had knocked her out but she did not notice any injury to Mrs. Geddie (R-133). Mrs. Geddie was transported to Community Hospital (R-134). Ms. Smith testified that she noticed a marijuana cigarette in the bedroom and pointed it out to a policeman (R-139). She does not recall Mrs. Geddie signing any paper while at the house (R-140).

A discussion about the status of Mrs. Geddie at the time she was picked up by the police department, after leaving the Community Hospital, ensued. The trial judge noted that the evidence showed that Mrs. Geddie left the hospital on foot and was picked up by police going in the opposite direction from her home and into a dangerous crime area. He found that Mrs. Geddie was a danger to herself and to others at this time with a blood alcohol reading of .289 (R-141-142). The Court concluded that police instructions to pick her up were, therefore, appropriate (R-141-142).

The Court then reviewed the evidence and noted that he did not feel that a waiver of search warrant had been shown in that Mrs. Geddie was highly intoxicated, transported to a

hospital and Mr. Geddie had been arrested. The Court agreed with Petitioner's contentions concerning the warrant, he stated that the police had ample time to obtain a warrant (R-156). The Court further stated that the executed consent form itself supported the contention that she was highly intoxicated. This was shown by her handwriting (R-158-159). The Court also concluded that other evidence showed severe intoxication since she was headed in the wrong direction after walking out of the hospital (R-160-166). However, the Court reserved ruling and continued the hearing to June 10, 1997.

On June 10, 1997, Ms. Laura Shevlin was called as a witness by the Court. Ms. Shevlin, a forensic scientist, testified that a person with a blood alcohol content in the range of .24 to .289 would have a high degree of physical and mental impairment (R-178-179). Ms. Shevlin testified that a person with blood alcohol at that level may mask some of the symptoms but the person's judgment would continue to be impaired (R-179-180). She concluded that such person would not comprehend the consequences of an act (R-181). She also concluded that any such person would only be semi-competent because of the lack of apprehension of consequence (R-182). She further stated that a person at that level of intoxication would tune out a good bit of the contents or explanation on a form as shown on State's Exhibit 1 - Consent Form (R-184). Ms. Shevlin further concluded that at such level of intoxication, a person would be highly impaired (R-191).

The Court then reviewed some of the evidence and found that Mrs. Geddie probably made a confession. He stated that the evidence appeared to show that Mrs. Geddie was as guilty

of possession of the marijuana as Mr. Geddie; and, that such evidence could be used against her in a case (R-199). The Court then orally denied the Motion to Suppress the marijuana seized at the home of Raymond Geddie (R-208-209). A written Order of denial was, thereafter, entered, finding that the police entry to the residence was with the consent of Mr. Geddie and that Mrs. Geddie had voluntarily consented to the search and seizure (R-37-42 - App. A, p. 1). This decision was affirmed by the Court of Criminal Appeals of Alabama on December 18, 1998.

The Court of Criminal Appeals of Alabama issued a Memorandum Opinion in this case on December 18, 1998. The Court held, in pertinent part, that the consent to search given to police officers by Mrs. Dixie Geddie was the product of a rational intellect and a free will. Moreover, the Court concluded that Mr. Geddie consented to the police entry into his residence on the evening of May 2, 1996. The Court gave considerable analysis to the consent issue concerning the search, and relied heavily on the testimony of Laura Shevlin, Forensic Scientist. The Court construed Ms. Shevlin's testimony to support the conclusion that Mrs. Geddie was not so impaired as to be unable to understand her actions, and further construed her testimony to be that Mrs. Geddie understood the consequences of her actions at the time she gave the consent to search. In order to reach the conclusion of "voluntary" consent, the Court found that according to Ms. Shevlin; Mrs. Geddie's blood alcohol level would actually be 0.245 under traditional testing methods; that a person who drank to excess regularly would be more capable of functioning at this level of impairment than a person who did

not indulge on a regular basis; that Mrs. Geddie would be impaired but capable of understanding her actions; and that Mrs. Geddie would have been capable of understanding that telling the police about her husband's marijuana would be a way to get back at him for hitting her. (App. C, p. 11)

The Petitioner disagreed with the Court's construction of the facts. Thereafter, Petitioner filed an Application for Rehearing and a Motion to Include Additional Facts. The facts were contained in the motion. The Petitioner contended in his Application for Rehearing and his Petition for Certiorari that the Opinion was in error for, among other issues, incomplete factual findings and findings of fact not supported by the testimony. The Petitioner requested a detailed inclusion of facts and, in particular, requested that the Court include facts disclosing as follows:

Laura Shevlin's testimony concluding that a person in Mrs. Geddie's position would not comprehend the consequences of any act and would be only semi-competent because of the lack of apprehension of consequence (R-182); that a person at such a level of intoxication would tune out a good bit of the contents or explanations on any consent to search form presented to her (R-184); that such person would be highly impaired, that a regular drinker at the level of intoxication discussed, may mask some of the effects of intoxication, but could not improve his judgment (R-179-180); that Mrs. Geddie may not have been capable of formulating in her mind that the consent could have bad consequences for her (R-185); and that Ms. Shevlin will not testify that Mrs. Geddie's blood alcohol level was only 0.245

rather than 0.289 (R-177). The Court of Criminal Appeals of Alabama overruled the Application for Rehearing and denied the Motion to Include Additional Facts on January 15, 1999, Appendix D, p. 17. The Petition for a Writ of Certiorari filed in the Alabama Supreme Court was initially granted but then denied without Opinion on June 30, 2000, Appendix F, p. 19. Hence, this Petition for a Writ of Certiorari to the Court of Criminal Appeals for Alabama. The construction given to the testimony of Laura Shevlin by the Trial Court and the Court of Criminal Appeals of Alabama on the issue of voluntary consent is the most important dispute contained in the testimony. Therefore, Petitioner has included some of this testimony in this Petition. This material testimony appears at Appendix J, p. 26.

REASONS FOR GRANTING THE WRIT

I. The Trial Court below and the Court of Criminal Appeals of Alabama committed reversible error when those Courts admitted or allowed ten (10) pounds of marijuana, ten thousand dollars ($10,000) cash and incriminating testimony to be used as evidence at the trail of Petitioner on the charge of Trafficking Cannabis in violation of 13A-12-231(l) Code of Alabama 1975, which resulted in his conviction and sentence to the custody of the Department of Corrections of Alabama. Petitioner contends that this evidence was seized as a result of a non-consent intrusion and entry into his residence by police officers of the City of Tallassee, Alabama without probable

cause, without a warrant and without the presence of exigent circumstances justifying the entry, contrary to the Fourth and Fourteenth Amendments to the United States Constitution and relevant decisions of this Court.

The Fourth Amendment to the Constitution of the United States provides:

> "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the persons or things to be seized."

This Court has held that evidence obtained by law enforcement officers in violation of the Fourth Amendment to the Constitution of the United States is not admissible in criminal prosecutions by reason of the exclusionary rule; and that the Fourth Amendment is applicable to the States through the due process clause of the Fourteenth Amendment to the Constitution of the United States. Mapp vs. Ohio, 367 U.S. 643, 81 S.Ct. 1684, 6 L.Ed.2d. 1081 (1961). The Fourth Amendment provides a reasonable and plain prohibition against government intrusion. The Amendment prohibits unreasonable conduct in a clear and certain manner. This Court has recognized some exceptions to the Fourth Amendment prohibition of arrests, searches and seizures without a warrant

but has strictly construed those circumstances. Unless well defined exceptions exist, an arrest, search or seizure by law enforcement officers inside a persons' residence must be based on a properly secured warrant. Wong Sun vs. United States, 371 U.S. 471, 83 S.Ct. 407, 9 L.Ed.2d. 441 (1963); Vale vs. Louisiana, 399 U.S. 30, 90 S.Ct. 1969 (1970); United States vs. Santanna, 427 U.S. 38, 96 S.Ct. 2406, 49 L.Ed.2d. 300 (1976); Mincey vs. Arizona, 437 U.S. 385, 98 S.Ct. 2408, 57 L.Ed.2d. 290 (1978); Payton vs. New York, 445 U.S. 573, 100 S.Ct. 1371, 63 L.Ed.2d. 639 (1980); Steagald vs. United States, 451 U.S. 204, 101 S.Ct. 1642, 68 L.Ed.2d. 38 (1981); Minnesota vs. Olson, 495 U.S. 91, 110 S.Ct. 1684, 109 L.Ed.2d 85 (1990).

This Court has also held that a law enforcement officers entry into a persons residence to arrest or search without a warrant is presumed unreasonable and the burden of proof is on those persons that purpose an exception or exemption. Coolidge vs. New Hampshire, 403 U.S. 443, 91 S.Ct. 2022, 29 L.Ed.2d. 564 (1971); Payton vs. New York, 445 U.S. 573, 100 S.Ct. 1371, 63 L.Ed.2d. 639 (1980); Welsh vs. Wisconsin, 466 U.S. 740, 104 S.Ct. 2091, 80 L.ED.2d. 732 (1984).

The Petitioner contends that this burden is reasonable because a waiver of a constitutional right of such importance should not be inferred. He contends that this inference occurred in the Court below and the State failed to meet the burden of proof. A short summary of the undisputed facts should expose this failure. On the evening of May 2, 1996 Petitioner's wife, Dixie Geddie, called the Tallassee Police Department and reported an incident of domestic violence which was investigated by two police officers prior to the

incident in question. It is undisputed that the police officers were dispatched to her home for an investigative purpose. It is also undisputed that they had a conversation with Mrs. Geddie in the front yard of her home. Moreover, the State has never contended that Mr. Geddie was present. The police had Mrs. Geddie all to themselves for purposes of the investigation. It is also undisputed that no problem then existed (R-49-50). After conducting their investigation the police left the Geddie residence. Shortly before 8:00 p.m. Chief Paul Yarborough and Investigator Archie Schnelle of the Tallassee Police Department arrived at the Geddie home and saw Mr. Geddie on his front porch. During direct examination Chief Yarborough testified that he entered the residence with the consent of Mr. Geddie in order to further investigate the complaint originally made by Mrs. Geddie. However, on cross examination he modified his prior testimony. The cross examination of Chief Yarborough is found at record pages 45 and 46 and consist of the following questions and answers:

"Q. Isn't it true. Chief Yarborough, that Mr. Geddie stated to you that his wife could not come to the door to see you because she was in the bedroom?

A. He could have said that. I don't recall.

Q. And then isn't it true that you demanded you must see her.

A. I told him that I needed to see his wife. I would like to see his wife, something to that affect."

It is clear from this testimony that Chief Yarborough did not

allow Petitioner to protest his entry. It would have been a very simple matter to ask the question, may I come in. Instead Chief Yarborough appears to have used a push through until resistance method of entry into the residence. Petitioner contends that Chief Yarborough's push through without a warrant method of entry into his residence is improper because Chief Yarborough never obtained Mr. Geddie's acknowledged consent to the entry. It is obvious by Chief Yarborough's testimony on cross examination that he will not attempt to describe Petitioner's acknowledged consent. This tactic appears to be, make a push until resistance is shown. If no resistance is shown then the officers may assume that a person has consented to the intrusion. Petitioner contends that a warrantless push through entry into his residence for the purpose of investigating a simple misdemeanor, or for the purpose of obtaining a vantage point from which one can better observe is no less a violation of the Fourth Amendment than a warrantless break-in of a door to the residence. The Petitioner contends that the actions of Chief Yarborough are obviously intrusive because the undisputed testimony reveals that no circumstances known to Chief Yarborough justified the intrusion.. The undisputed testimony establishes that police officers had investigated Mrs. Geddie's complaint prior to Chief Yarborough's arrival, spoke with Mrs. Geddie alone, found that no incident had occurred and left the premises (R-42). Moreover, Chief Yarborough testified that he had no knowledge concerning drugs at the premises and had never heard of Mr. Geddie or Mrs. Geddie prior to that evening. However, the most significant reason that the State failed to

show a waiver of a constitutional right and failed in it's burden of proof is Chief Yarborough's cross examination testimony, where he modified his prior testimony concerning Petitioner's consent. A careful reading of that testimony reveals that Chief Yarborough would not testify that Petitioner acknowledged that he had consent to enter the residence. He simply testified that Mr. Geddie may have said that Mrs. Geddie could not see him, and that he did not recall. The Petitioner contends that Chief Yarborough's failure to testify that Mr. Geddie acknowledged his request and affirmatively consented to his entry falls short of the burden of proof required to overcome the preseumption of illegality. The Petitioner therefore requests that the entry into his residence, the arrest and seizure of his person and all evidence found as a result of said entry be declared an unreasonable search and seizure contrary to the Fourth and Fourteenth Amendments to the Constitution of the United States and suppressed. This Court has held that an illegal entry can invalidate a search. Beck v. Ohio, 379 U.S. 89, 85 S.Ct. 223, 13 L.Ed.2d. 142 (1964). A trespass may also invalidate consents Soldal v. Cook County, 506 U.S. 56, 113 S.Ct. 538, 121 L.Ed.2d. 450 (1992). The Petitioner contends that the trespass invalidated both the original arrest and the consent to search, and requests that this Court reverse.

V. The Court of Criminal Appeals of Alabama and the Trial Court below committed reversible error when those Courts denied Petitioner's Motion to Suppress Evidence seized and obtained by police in violation of the Fourth and Fourteenth Amendments to the Constitution of the United

States when those Courts found that Petitioner's wife "voluntarily" consented to the search of his residence on May 2, 1996. The Petitioner contends that the search was too broad to qualify as a search incident to a lawful arrest or as legal evidence disclosed and seized by a sweep search. Moreover, the Petitioner contends that based on the totality of the evidence presented at the suppression hearing a person exercising "reasonable caution" could not conclude that his wife's consent was voluntary in view of her severe intoxication.

It is now well established that the Fourth Amendment to the United States Constitution is applicable to the states through the due process clause of the Fourteenth Amendment to the United States Constitution. Mapp v. Ohio, 367 U.S. 643, 81 S.Ct. 1084, 6 L.Ed.2d. 1081 (1961). All arrests, searches and seizures conducted by police officers must comply with the Fourth Amendment and particularly the reasonableness clause. Therefore, even if the police officers of Tallassee were lawfully in Petitioner's residence on the evening of May 2, 1996, they remain under a duty to act in a reasonable manner during an investigation. This Court has considered the reasonableness standard in cases involving a search incident to a lawful arrest. Chimel v. California, 395 U.S. 752, 89 S.Ct. 2034, 23 L.Ed.2d. 685 (1969); cases involving allegations of exigent circumstances Payton v. New York, 445 U.S. 573, 100 S.Ct. 1371, 63 L.Ed.2d. 639 (1980); Mincey v. Arizona, 437 U.S. 385, 98 S.Ct., 2408, 59 L.Ed.2d. 290 (1978); and this Court has consistently applied the reasonableness standard even in those cases where protective sweep searches are necessary.

Maryland v. Buie, 494 U.S. 325, 110 S.Ct. 1093, 108 L.Ed.2d. 276 (1990); Arizona v. Hicks, 480 U.S. 321, 107 S.Ct. 1149, 94 L.Ed.2d. 347 (1987).

The search in this case was very broad. The police searched through drawers, closets, bags, footlockers, etc. It is clear that this search cannot be considered a reasonable search incident to a lawful arrest. It cannot qualify as a search found necessary by reason of exigent circumstances or any other exception. The search of Petitioner's residence can only be considered reasonable if it was conducted pursuant to a valid consent obtained from Mrs. Dixie Geddie. Mr. Geddie contends that the facts assembled in this case would convince a person of reasonable caution to find that Mrs. Geddie's consent was not voluntarily given for the search of the residence. This Court has held that the issue of consent must be reviewed based on all of the circumstances. The validity of a consent to search is to be judged by the voluntary nature of the consent. This review, however, has objective elements. This Court has held that the voluntary nature of the consent must be judged by a person exercising reasonable caution. Illinois v. Rodrigez, 97 U.S. 117, 110 S.Ct. 2793, 111 L.Ed.2d. 1481 (1990). See also, Schneckloth v. Busta Monte, 412 U.S. 218, 93 S.Ct. 2041, 36 L.Ed.2d. 854 (1973); Ohio v. Robinette, 519 U.S. 33, 117 S.Ct. 417, 136 L.Ed.2d. 347 (1996); Coolidge v. New Hampshire, 403 U.S. 443, 91 S.Ct. 2022, 20 L.Ed.2d. 564 (1971); Fraizer v. Culp, 394 U.S. 731, 89 S.Ct. 1420, 22 L.Ed.2d. 684 (1969); United States v. Matlock, 415 U.S. 164, 94 S.Ct. 988, 39 L.Ed.2d. 242 (1974).

Petitioner contends that a review of the facts will show that Tallassee police officers acted unreasonably during the initial

act of obtaining the consent. Indeed, they shook Mrs. Geddie to consciousness, obtained the consent and immediately sent her to the hospital in an ambulance with a paramedic to supervise. This happened immediately after she regained conscience. Moreover, the police officer knew that she had been drinking alcohol and found a marijuana cigarette next to her bed. When a person of reasonable caution must continually shake another person to conscientiousness, after observing her intoxication and obvious marijuana use, the person of reasonable caution may well call an ambulance and paramedics but clearly would not have the victim execute a consent to waive an important Constitutional right such as the right to object to the search of her residence; and certainly not without establishing a clear Miranda basis for the police activities. Furthermore, it would not be appropriate for a person of reasonable caution to conclude that Mrs. Geddie would consent to an act that may send her to prison for a mandatory three (3) year term and a mandatory $25,000 fine.[3]

Petitioner also contends that his position is fully supported by the expert testimony of Laura Shevlin, Forensic Scientist. The material testimony appears at Appendix J, p. 26. Ms. Shevlin testified that a person in Mrs. Geddie's position would be highly impaired and would not comprehend the consequence of her act. She also testified that a person of Mrs. Geddie's level of intoxication, .289, would tune out a "good bit" of the terms of a consent to search form. Contrary to the

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[3]Mrs. Geddie was later charged by Tallapoosa County authorities for the same offense arising out of this incident.

opinion of the Court of Criminal Appeals of Alabama on appeal, Ms. Shevlin's testimony does not support the conclusion that the consent was obtained from a person of rational intellect and exercising a free will. The testimony of Laura Shevlin actually supports the testimony of Mrs. Geddie at trial. Mrs. Geddie essentially testified that she was so intoxicated that she cannot recall even talking with police officers, or anyone else, inside her home that night. The question still remains, would a person of reasonable caution consider the consent voluntary. The Petitioner contends that such person would not.

CONCLUSION

The Petition for Writ of Certiorari should be granted and the judgment below reversed. The Petitioner requests that this Petition be granted, this judgment of conviction reversed and that this Court enter an Order excluding all evidence seized as a result of the aforementioned consent search.

Respectfully submitted,

RAYMOND GEDDIE, Pro Se
418 Scott Street
Montgomery, Alabama 36104
334-264-5500

APPENDIX A

CIRCUIT COURT OF TALLAPOOSA COUNTY, ALABAMA

June 18, 1997

CC-96-192

State of Alabama vs. Raymond Geddie

SEGREST, Judge

ORDER

This matter came on for consideration on the defendant's Motion to Suppress evidence seized by the police in this matter and Motion to Suppress a statement made by the defendant. The defendant contends that marijuana seized by the police in this case was seized by an illegal, warrantless search. The defendant contends that the statement made by the defendant was induced by inappropriate suggestions from the police that they would work with him and things would go better for him if he gave a statement. The Court heard evidence *ore tenus* from witnesses presented both by the state and by the defendant. The Court, on its own motion, required, without objection, the production of hospital records which were introduced into evidence; and the Court called as an expert witness Mrs. Laura Shevlin, a witness who has expertise in the matter of the physical and mental effects of intoxication. Having carefully considered the evidence, the Motion to Suppress the statement made by the defendant in GRANTED; but the Motion to Suppress the marijuana seized by police is DENIED.

THE DEFENDANT'S STATEMENT

It is abundantly clear to the Court that, in the course of "taking a statement" from the defendant, the interrogating officer indicated to the defendant that he would be willing to talk with the District Attorney and to talk with the Court to encourage leniency in exchange for "assistance" from the defendant in dealing with the "drug problem." In the background of all this, and in the same time frame, the defendant voluntarily agreed to the condemnation of approximately $13,000 in cash. Based on the totality of circumstances, this Court is convinced that the statement was improperly induced by the police through the discussions of leniency. Hence, the Motion to Suppress the defendant's statement is granted.

CONSENT TO SEARCH BY A VOLUNTARILY INTOXICATED PERSON

The more serious question in this matter is whether it was appropriate for the police to conduct a search of the defendant's home without a warrant based on consent given by his wife who was highly intoxicated at the time she gave the consent. Mrs. Dixie Geddie, the defendant's wife, called police and made a report of domestic violence. An officer visited the scene but was told by Mrs. Geddie that there was no problem. When the police chief discovered that the investigating officer spent only a couple of minutes at the scene, he attempted to call the residence, but no one answered. He and the investigator then returned to the Geddie home and requested of the

defendant that they be allowed to speak with Mrs. Geddie. They were permitted to enter the house and found Mrs. Geddie in a bedroom. They described her as being unconscious. Within a few minutes, they were able to revive her, and they called paramedics to the scene. The police officers observed partially smoked marijuana cigarettes in plain view in ashtrays. Mrs. Geddie smelled of alcohol, but then she came around, the defendant began to talk about the marijuana that was in the house. She may have been angry with her husband because of the fact he had not allowed her to have car keys.[1]

It is quite likely that in their altercation about the car, the defendant pushed Mrs. Geddie and she fell and may have struck her head on the floor. Although the police officers noticed that Mrs. Geddie had apparently been using alcohol, they earnestly felt she was a victim of domestic violence. When Mrs. Geddie began to talk about the marijuana, they asked her to sign a consent to search, which they apparently happened to have with them. The officers probably did not

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[1]The Court points out that this information comes from the statement made by the defendant to the police which has now been suppressed by order of this Court. The information about the possible domestic violence, however, has absolutely nothing to do with the drug case; and, therefore, the undersigned Judge believes it is appropriate to consider the statement for the purpose of this Order which is unrelated to the case of the statement in connection with the prosecution of the drug case.

expect to find the ten pounds of marijuana that they actually found in the adjoining room. Mrs. Geddie was dispatched to the hospital by ambulance. She left the hospital on foot, without medical authorization. The hospital notified the police, and Mrs. Geddie was eventually picked up by the police. The Court notes, however, that after walking perhaps three-quarters of a mile in the direction of her home from the hospital to where what is known in the Tallassee area as the Five Points area, instead of continuing in the same direction and going toward her residence in East Tallassee, she turned right and headed in the direction of a housing project in Jordanville, where she was located by police. She was informed that she was under arrest for public intoxication, but no formal charges were placed against her. She was carried to the police department where she made a statement concerning the alleged domestic violence incident. The police chief and one of his officers then drove her to a relative's house. The chief explained that he thought she had "been through enough."

The Court, in its own motion, obtained the records from the hospital which showed that, at the time she was treated, her blood alcohol content was measured at .289 percent. According to Mrs. Laura Shevlin, the expert called by the Court, there is often some difference in the measurement of blood alcohol content at small hospitals and that the hospital measurement might equal approximately .245 percent on the instrumentation usually used by the State in the measurement of blood alcohol content.

According to Mrs. Shevlin, the wife's judgment would

have been impaired based on the blood alcohol content; but nevertheless, Mrs. Geddie obviously had a great deal of knowledge about what she was doing. She communicated meaningful information and was, in fact, able to write, even though the impairment of her motor control is evidence by her handwriting at that time.

Based on the totality of the circumstance, the undersigned judge has no question that if Mrs. Geddie had confessed to a crime at that time, (which she probably did in fact do), the confession would be admissible under the standards that have been announced by the appellate courts of the State of Alabama. Moreover, the courts have suggested that the same standard would apply to a consent to search that applies in the case of a confession.

There are a couple of interesting aspects to this matter that warrant further discussion. This Court strongly suspects that Mrs. Geddie's state of consciousness was far more impaired because of alcohol than because of a blow to the head. Under the circumstances, when she awoke, talking about illegal drugs in the immediate vivinity, this Court feels that it was probably incumbent on the police, acting in the best interest of Mrs. Geddie, to immediately search for the remnant of any drugs that she may have ingested or consumed so that medical authorities could be adequately informed and appropriate action taken if need be. However, the evidence does not suggest that medical emergency was what motivated the search made by the police.

More importantly, at the time the police made their warrantless search, they did not know that Mrs.Geddie was as

highly intoxicated as she, in fact, was. They, in fact, reasonably believed, based on what she had to say, that her impairment was due to physical injury inflicted by the husband. Law enforcement officers are not medical experts, and it would have been very dangerous for law enforcement officers to assume that Mrs. Geddie's impairment was caused solely by the fact that she was drunk.

The decision by Justice Scalia in the case of *Illinois vs. Redriguez*, 110 S. Ct. 2793 (1990) indicated that police may, under certain circumstances, conduct a search, even based on the mistaken belief that there had been a legitimate consent. Thus, it is not merely Mrs. Geddie's mental state that is in question here. The reasonableness of the search also depends upon the officers' mental state and the reasonableness of their belief that they were acting with consent. Mrs. Geddie, it appeared to them, had been a victim of domestic violence and, unlike the case decided by Justice Scalia, she was consenting to the search of her own residence.

Based on the foregoing facts, the Court finds that the Motion to Suppress the Marijuana seized by the police is due to be denied. The search conducted by the police considering all of the circumstances, was reasonable. The Court finds that Mrs. Geddie was legally competent, based on Alabama law, to give consent, despite her intoxicated condition. The Court further finds that, in conducting the search, the officers reasonably believed that Mrs. Geddie was legally competent to give consent and that she had, in fact, consented.

Either of these conclusions would lead to the further conclusion that the search which revealed ten pounds of

marijuana in this case was reasonable.

The Clerk of the Court is to mail a copy of this Order to counsel of record for the defendant and the Office of the District Attorney

Signed this 18th day of June, 1997.

APPENDIX B

CIRCUIT COURT OF TALLAPOOSA COUNTY, ALABAMA
June 10, 1998
CC-96-192
State of Alabama vs. Raymond Geddie
Bryan, Judge

ORDER

Defendant appeared in open court with counsel. On defendant's plea of guilty to a charge of Criminal Mischief In The Third Degree he is found guilty and is sentenced to serve Ninety (90) days in the Tallapoosa County Jail, to pay a Victims Compensation Commissions assessment of Twenty-fine ($25.00), to pay restitution to the Tallassee Police Department in the amount of Two Hundred One and 20/1000 Dollars ($201.20) plus the costs of court. Defendant's jail sentence is suspended on his good behavior and on payment of all court ordered sums at the rate of Twenty-five Dollars ($25.00) per week commencing Friday June 19, 1998. The Assault In The Third Degree charge is nolle prossed on motion of the State.

In the presence of defendant counsel stated that the defendant wished to waive his right to trial by jury as to the count of the indictment charging Trafficking In Marijuana. The court addressed defendant and determined that he was making a knowing and intelligent waiver of his right to a trial by jury. Counsel for the State and the defendant entered a stipulation that this case could be submitted for adjudication

on testimony presented at a suppression hearing. The court addressed defendant directly and determined that he concurred in the stipulation. Thereafter the court read the transcript of the suppression hearing.

After the court had an opportunity to read the transcript defendant appeared in open court with counsel. The court addressed the defendant:

Based on the testimony presented the court is satisfied beyond a reasonable doubt that you are quilty of Trafficking In Marijuana.

At that point defendant waived his right to a pre-sentence report and hearing. The court then addressed defendant:

Do you have anything to say before the court passes sentence. Defendant said that he had nothing to say. The court then addressed defendant: It is the judgment and sentence of this court that you be and hereby are sentenced to the penitentiary of the State of Alabama for a term of twn (10) years. That sentence shall be split to provide that you serve three (3) years according to the Trafficking In Marijuana statutes. Furthermore you shall pay the mandatory fine of Twenty-five Thousand Dollars ($25,000.00). You shall also pay the costs of court and a Victims Compensation Commission assessment of Fifty Dollars ($50.00). In addtition you shall reimburse Tallapoosa County for any medical or dental expenses incurred by you while an inmate on this charge. You shall surrender to the Tallapoosa County Jail at or before 9:00 a.m. Monday June 15, 1998.

After sentencing counsel for defendant made an oral notice of appeal and requested that an appeal bond be set. An appeal

bond of Thirty Thousand Dollars ($30,000.00) is set.

Done this the 10th day of June, 1998.

APPENDIX C

THE COURT OF CRIMINAL APPEALS OF ALABAMA
December 18, 1998

RE: CR-97-1873
Raymond Geddie v. State (Appeal from Tallapoosa County Circuit Court: CC-96-192.

RE: AFFIRMED BY MEMORANDUM

The Appellant, Raymond Geddie, was convicted of trafficking in cannabis,[1] a violation of §13A-12-231(l), Code of Alabama 1975. He was sentenced to 10 years' imprisonment, split to serve 3 years, and he was fined $25,000.

The appellant raises just one issue on appeal. He argues that his wife's consent to search their home was involuntary because , he claims, she was intoxicated to such an extent that

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[1]Following an evidentiary hearing on his motion to suppress, the appellant waived his right to a jury trial. Based on the evidence presented at the suppression hearing, the trial court determined that the evidence established the appellant's guilt beyond a reasonable doubt, and it entered a verdict finding the evidence established the appellant's guilty of trafficking in cannabis, as charged in the indictment. As part of the same proceeding, the appellant pleaded guilty to one count of criminal mischief in the third degree. However, he does not challenge this conviction.

she was unable to appreciate the nature and consequences of her actions.[2]

This court has long held that warrantless searches are per se unreasonable, unless they fall within one of the recognized exceptions to the warrant requirement. See, e.g. Chevere v. State, 607 So.2d. 361, 368 (Ala.Cr.App. 1992). These exceptions are : (1) plain view; (2) consent; (3) incident to a lawful arrest; (4) hor pursuit or emergency; (5) probable cause coupled with exigent circumstances; (6) stop and frisk situations; and (7) inventory searches. Ex parte Jilley, 484 So.2d. 485, 488 (Ala. 1985); Chevere, supra 607 So.2d. at 368. "Where a search is executed without a warrant, the burden falls upon the State to show that the search falls within an exception." Ex parte Tucker, 667 S.2d. 1339, (Ala.), cert. denied, 516 U.S. 944, 116 S.Ct. 382, 133 L.Ed.2d. 305 (1995), citing Kinard v. State, 335 So.2d. 924 (Ala. 1976).

Warrantless searches are constitutionally permissible when executed with the owner's consent. See, e.g., Williams v. State, 601 S.2d. 1062, 1070 (Ala.Cr.App. 1991), aff'd, 662 So.2d.

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[2]The state argues that the appellant lacks standing to challenge the alleged violation of Mrs. Geddie's Fourth Amendment rights. Without addressing the merits of this contention, we note that our examination of the record reveals that the state did not questions the appellant's standing to raise a Fourth Amendment challenge below. Thus, the state is precluded from questioning standing on appeal. See State v. Compton, 711 So.2d. 1114, 1115 (Ala.Cr.App. 1997); Hopkins v. State, 661 So.2d. 774, 783 (Ala.Cr.App. 1994).

929 (Ala.), cert. denied, 506 U.S. 957, 113 S.Ct. 417, 121 L.Ed.2d. 340 (1992); Dixon v. State, 476 So.2d. 1236 (Ala.Cr.App. 1985). The question whether a consent to a search is voluntary is a question of fact for the trial court to determine, based upon the totality of the circumstances. Bender v. State, 687 So.2d. 219, 221 (Ala.Cr.App. 1996). No particular factor should be given undue weight in determining the issue of voluntariness. The fact that an individual is intoxicated does not mean that his or her consent to search was not the product of a rational intellect and a free will. See State v. Wilson, 529 So.2d. 1061, 1063-64 (Ala.Cr.App. 1988); Lewis v. State, 439 So.2d. 1353, 1354-55 (Ala.Cr.App. 1983).

Here, the evidence established that on the evening of May 2, 1996, Dixie Geddie placed a 911 emergency telephone call to the Tallassee Police Department. She indicated to the 911 dispatcher that some form of domestic abuse had taken place. Two police officers were dispatched to the scene. When they arrived, Mrs. Geddie met them outside the house and told them that everything was all right, whereupon the officers left.

Tallassee Police Chief Paul Yarborough was aware of the 911 call and inquired about the results of the investigation. When he learned that the officers had left after only 1-2 minutes, he was concerned that the officers had not collected sufficient information to adequately prepare a report that would be in compliance with the Family Violence Statute, and decided to follow up on the officers' call. Chief Yarborough attempted to telephone the Geddie residence, but when he could not reach Mrs. Geddie by telephone, he decided to visit the Geddie home. He radioed Investigator Archie Schnuelle to

meet him at the scene.

When Yarborough and Schnuelle arrived at the Geddie house around 8:00 p.m., the appellant answered the door. Yarborough told the appellant that he would like to speak with Mrs. Geddie. The appellant responded that his wife was in the bedroom, gesturing toward the rear of the house. Yarborough and Schnuelle walked through the house to the master bedroom, where they observed Mrs. Geddie lying on the bed. She was unconscious and did not respond to their attempts to awaken her, so Yarborough telephoned for an ambulance. However, before the ambulance arrived, Mrs. Geddie regained consciousness. Yarborough noticed a red place and marks on Mrs. Geddie's face, so he asked here what had happened. She replied that the appellant hit her. Yarborough placed the appellant under arrest for assault.

While Yarborough was talking with Mrs. Geddie, Schnuelle noticed a partially smoked marijuana cigarette in an ashtray on the dresser. The officers asked Mrs. Geddie about the cigarette. She stated that the cigarette belonged to her husband, and she added that there was more marijuana in another bedroom. The officers asked Mrs. Geddie if she would consent to a search of her house. Although the officers could tell that Mrs. Geddie had been drinking, Yarborough stated that she was able to understand and answer their questions. He further stated that they were able to understand her responses. After Schnuelle explained the contents of the "Consent to Search" form to Mrs. Geddie, she signed and dated the form, giving her consent to a search of the house.

Yarborough and Schnuelle then searched the bedroom

indicated by Mrs. Geddie. They found a one-pound bag of marijuana in a dresser drawer and nine one-pound bags of marijuana in a duffel bag in the bedroom closet. Also found was a bank bag containing $10,000 in cash. The officers arrested the appellant and charged him with trafficking in cannabis.

Meanwhile, paramedic had arrived at the Geddie house. Mrs. Geddie told one of the paramedics that her husband had knocked her out. The paramedic testified that while, in her opinion, Mrs. Geddie was intoxicated, she understood what was going on. Mrs. Geddie told the paramedic that she wanted "out of the situation," which the paramedic interpreted to mean that Mrs. Geddie wanted to stop drinking and using drugs. At the hospital, medical personnel took a blood sample from Mrs. Geddie and performed a blood-alcohol test. Mrs. Geddie's blood-alcohol level was 0.289%. However, expert witness Laura Shevlin, a forensic scientist, testified that this result would be higher than a normal blood-alcohol test because the hospital tested serum, rather than blood. She stated that Mrs. Geddie's test results would be approximately 0.245% under traditional testing methods. Shevlin stated that a person who drank to excess regularly would be more capable of functioning at this level of impairment than a person who did not overindulge on a regular basis. She stated that at this level Mrs. Geddie would be impaired, but capable of understanding her actions. Shevlin stated that Mrs. Geddie would have been capable of understanding that telling the police about her husband's marijuana would be a way at getting back at him for hitting her.

The appellant offered the testimony of his wife, who contended that she had been drinking whiskey and beer since 10:00 a.m. that morning. Mrs. Geddie stated that she remembered going outside to talk to the police, and then she came inside and passed out on her bed. According to Mrs. Geddie, the next thing she remembered was waking up in the hospital. She stated that she had no recollection of talking with Yarborough and Schnuelle, the paramedics, or of signing the consent to search. Mrs. Geddie conceded that at that point in her life she drank to excess quite often.

We believe the testimony sufficiently established that Mrs. Geddie, while impaired, was not so intoxicated that she failed to understand the consequences of her actions when she executed the consent to search. "When conflicting evidence is presented on the issue of the voluntariness of a consent to search and the trial judge finds that the consent was voluntarily given, great weight must be given his judgment." Cook v. State, 637 So.2d. 229, 231 (Ala.Cr.App. 1994); Ball v. State, 592 So.2d. 1071, 1074 (Ala.Cr.App. 1991). "[A] trial court's ruling based upon conflicting evidence given at a suppression hearing is binding on this court and is not to be reversed absent a clear abuse of discretion." Jackson v. State, 589 S.2d. 781, 784 (Ala.Cr.App. 1991).

The judgment of the trial court is therefore affirmed.

All the Judges concur.

APPENDIX D

THE COURT OF CRIMINAL APPEALS OF ALABAMA
January 15, 1999

RE: CR-97-1873
Raymond Geddie v. State (Appeal from Tallapoosa County Circuit Court: CC-96-192.)

You are hereby notified that on January 15th, 1999 the following action was taken in the above referenced cause by the Court of Criminal Appeals:

Application for rehearing overruled. 39(k) Motion Denied.

Lane W. Mann
Clerk
Court of Criminal Appeals

APPENDIX E

THE SUPREME COURT OF ALABAMA

July 16, 1999

1980660

Ex parte Raymond Geddie. PETITION FOR WRIT OF CERTIORARI TO THE COURT OF CRIMINAL APPEALS (In re: Raymond Geddie v. State) (97-1873) (Tallapoosa Cir.Ct.No.: CC-96-192)

ORDER

PER CURIAM. Petition for writ of certiorari to the Court of Criminal Appeals is granted. See Rules 39(f) and (h), Alabama Rules of Appellate Procedure, for instructions regarding the filing of additional briefs and oral argument.

I, Robert G. Esdale, Sr., as Clerk of the Supreme Court of Alabama, do hereby certify that the foregoing is a full, true and correct copy of the instrument(s) herewith set out as same appear(s) of record in said court.

Witness my hand this 16th day of July, 1999.

s/ _____

ROBERT G. ESDALE, SR.

Clerk, Supreme Court of Alabama

APPENDIX F

THE SUPREME COURT OF ALABAMA
June 30, 2000

1980660

Ex parte Raymond Geddie. PETITION FOR WRIT OF CERTIORARI TO THE COURT OF CRIMINAL APPEALS (In re: Raymond Geddie v. State) (Tallapoosa Cir.Ct.No.: CC-96-192) (Low'r.App.Ct.No.: 97-1873)

CERTIFICATE OF JUDGMENT

WHEREAS, on July 16, 1999, Writ of Certiorari to the Court of Criminal Appeals was granted by this Court, and the cause was set down for submission pursuant to Rule 39, Alabama Rules of Appellate Procedure,

WHEREUPON, come the parties and the Petition for Writ of Certiorari being submitted and duly examined and understood by the Court, it is considered by the Court that the writ heretofore issued should be quashed and that the petition should be denied.

IT IS, THEREFORE, CONSIDERED AND ORDERED that the Writ of Certiorari heretofore issued to the Court of Criminal Appeals be, and the same us hereby, quashed, and the Petition for Writ of Certiorari be, and the same is hereby, denied. NO COSTS TAXED. NO OPINION.

PER CURIAM - Hooper, C.J., and Maddox, Houston, Cook, See and Lyons, JJ., concur; Johnstone and England, JJ., dissent; Brown, J., recuses.*

(Justice Brown was a member of the Court of Criminal Appeals when that court considered this case.)

I, Robert G. Esdale, Sr., as Clerk of the Supreme Court of Alabama, do hereby certify that the foregoing is a full, true and correct copy of the instrument(s) herewith set out as same appear(s) of record in said court.

Witness my hand this 16th day of July, 1999.

s/ _____

ROBERT G. ESDALE, SR.

Clerk, Supreme Court of Alabama

APPENDIX G

Fourth Amendment to the Constitution of the United States:

> "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the persons or things to be seized."

APPENDIX H

Fourteenth Amendment to the Constitution of the United States:

> "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny any person within its jurisdiction the equal protection of the laws."

APPENDIX I

Section 13A-12-231 1975 Code of Alabama, as amended.

Except as authorized in Chapter 2, Title 20:

(1) Any person who knowingly sells, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession, in excess of one kilo or 2.2 pounds of any part of the plant of the genus Cannabis, whether growing or not, the seeds thereof, the resin extracted from any part of the plant, and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin including the completely defoliated mature stalks of the plant, fiber produced from the stalks, oil, or cake, or the completely sterilized samples of seeds of the plant which are incapable of germination is guilty of a felony, which felony shall be known as "trafficking in cannabis." Nothing in this subdivision shall apply to samples of tetrahydrocannabinols including, but not limited to, all synthetic or naturally produced samples of tetrahydrocannabinols and which do not contain plant material exhibiting the external morphological features of the plant cannabis. If the quantity of cannabis involved:

a. Is in excess of one kilo or 2.2 pounds, but less than 100 pounds, the person shall be sentenced to a mandatory minimum term of imprisonment of three calendar years and to pay a fine of twenty-five thousand dollars ($25,000).

b. Is 100 pounds or more, but less than 500 pounds, the person shall be sentenced to a mandatory minimum term of imprisonment of five calendar years and to pay a fine of fifty thousand dollars ($50,000).

c. Is 500 pounds or more, but less than 1,000 pounds, the person shall be sentenced to a mandatory minimum term of imprisonment of 15 calendar years and to pay a fine of two hundred thousand dollars ($200,000).

d. Is 1,000 pounds or more, the person shall be sentenced to a mandatory term of imprisonment of life without parole.

(12) The felonies of "trafficking in cannabis," "trafficking in cocaine," "trafficking in illegal drugs," "trafficking in amphetamine," and "trafficking in methamphetamine" as defined in subdivisions (1) through (11), above, shall be treated as Class A felonies for purposes of Title 13A, including sentencing under section 13A-5-9. Provided, however, that the sentence of imprisonment for a defendant with one or more prior felony convictions who violates subdivisions (1) through (11) of this section shall be the sentence provided therein, or the sentence provided under Section 13A-5-9, whichever is greater. Provided further, that the fine for a defendant with one or more prior felony convictions who violates subdivisions (1) through (11) of this section shall be the fine provided therein, or the fine provided under Section 13A-5-9, whichever is greater.

(13) Notwithstanding any provision of law to the contrary,

any person who has possession of a firearm during the commission of any act proscribed in this section shall be punished by a term of imprisonment of five calendar years which shall be in addition to, and not in lieu of, the punishment otherwise provided, and a fine of twenty-five thousand dollars ($25,000); the court shall not suspend the five-year additional sentence of the person or give the person a probationary sentence.

APPENDIX J

Testimony of Laura Shevlin:

Mr. Lisenby, would you like to proceed with the questions initially to Ms. Shevlin, or do you want me to ask my own questions and then give both sides an opportunity to ask questions? It doesn't make any difference with me.

MR. LISENBY: I think that I would prefer that, since she's been called as a court's witness.

THE COURT: Okay. Raise your right hand.

(WITNESS SWORN)

LAURA SHEVLIN,

a witness, after having first been duly sworn to speak the truth, the whole truth, and nothing but the truth, took the stand and testified as follows:

EXAMINATION

BY THE COURT:

Q. Okay. This is a suppression hearing, Ms. Shevlin, and the key issue involved is whether a consent signed by Dixie Geddie was legally effective. That's the ultimate decision that I've got to make in this case. I show you a document that has been admitted into evidence previously. That is a hospital record, and it I believe shows a certain percentage of alcohol in her blood. And that's one of the areas that I want to ask you about.

A. Yes.

Q. Do you see the figure?
A. I see the figure.

Q. It is -- I'll clarify it. It is .289 is the figure that is there.
A. Yes.

Q. But that is not, I don't think, exactly the same thing as the blood alcohol content on the intoxilyzer and those things?
A. Typically hospitals, particularly smaller hospitals, perform blood alcohols on serum, which is a little bit different than blood.

Q. Can you tell from the record whether that was --
A. No, because they unfortunately typically also label it as blood. But the instrumentation required to do serum alcohols is much more a part of smaller hospital's repertoire than is the instrumentation required for blood alcohol.

Q. Okay. Assuming that it is as it normally is at a small hospital, what would that .289 translate into?
A. Approximately .245 in terms of whole blood.

Q. Now, a person who is .245 on whole blood would still be pretty intoxicated?
A. Yes.

Q. Assume that a person is either .245 or in the range of .245 to .289, what physical impairment and mental impairment would you expect of such a person?
A. A person --

THE COURT: Incidentally, do ya'll want her to demonstrate her expertise by reciting her curriculum vitae and her experience and training and all that? I'll be glad to have her do that.

MS. KIRK: Your honor, I've heard it before.

MR. LISENBY: Judge, the State is satisfied. We know Ms. Shevlin very well.

Q. Go ahead.

A. Okay. A person with a .24 blood alcohol, to start at this level, is going to be a highly impaired individual. This person physiologically will have slowed responses, will have difficulty in moving the major muscles of the body in a coordinated fashion. In other words, this person m i g h t stumble, might stagger, might need hand holds to stay upright, would have difficulty using the arms with any degree of accuracy. Such a person might be expected to slur the speech or mumble or have the whole speech just dwindle off to nothing at times.

Depending upon the circumstances, a person like this might become sleepy or might not. It very much depends upon whether the person is stimulated by any, any activity or other persons being present. A person at this level, getting into psychological sphere, will have impaired judgment, will have an increase in carelessness, will have an inability to pay attention, will have jumbled thought processes.

If we talk about a level of a .289, there is more likelihood of the person becoming quite sleepy. At this level a person, is unattended, might go to sleep, particularly if that person is not accustomed to alcohol.

Q. Suppose that they are accustomed to alcohol.
A. If they are accustomed ti alcohol, they are probably more able to stay awake if that person is trying to.

Q. At this point in time, my conclusion, which I'll base my question on that, is that she probablydrank on a regular basis, probably got very drunk two or three times a week. What difference would that make?
A. Okay. The person who is accustomed to drinking large quantities of alcohol which has a very high blood alcohol level will partly be able to mask some of the symptoms of this in terms of walking, know to hold on or not to walk under certain circumstances, if that's a possibility. May choose to speak slowly to avoid being incapable if speaking. It does not improve response time that the person is accustomed to drinking alcohol. It does not improve judgment that the person is accustomed to it. It does have the effect that the person will feel far less intoxicated. That's a subjective thing.

Q. What would be the likelihood of a person who is .289 passing out, just losing consciousness?
A. It certainly can happen. It happens more readily with inexperienced drinkers than with experienced drinkers, but it certainly can happen. On the other hand, some persons are

conscious up into the .4's if they are well accustomed drinkers. Circumstances vary for the same person, whether the person is being stimulated or not.

Q. Assume that the person is in the range of .245 to .289 and there was a little bit of pushing and shoving and the person fell down and struck her head. Would a trauma to the head by more likely to bring about unconsciousness under those -- you know, because of the drunken condition or not? Or is there any connection, or do you know?

A. That's a hard thing to evaluate because it's going to -- the person will feel pain less because of the high level of intoxication. So the pain aspect of a blow to the head or scraping up the knees or whatever happens when the person falls will not be as intense.

On the other hand, if a person is nearing the point of passing out, then that person with a good blow to the head might be more likely to. On the other hand, some sort of a fight, the person is being highly stimulated, so is less likely to pass out from the alcohol.

Q. Assume that a person goes to sleep in that intoxicated condition. Would it be more difficult to arouse them from sleep?

A. Typically, yes.

Q. Okay. Would a person who is in that range of intoxication be likely to be able to knowingly give permission for a search?

A. A person can understand that a search is to be made

without comprehending the consequences to himself or herself. This is where the dividing line comes in. The person may understand that a search of vehicles is to be made or a blood sample is to be taken without being able to relate that to consequences to the person, to oneself.

Q. And, you know, I'm exploring a spectrum of these different activities that a person could engage in. And, you know, if she knows what she's doing and can give, you know, meaningful information, is she competent to sign? That's the question.
A. Only semi-competent because of the lack of appreciation of consequences.

Q. Well, I'm sorry. We don't have that category in the law.
A. I know. There's no semi-competent. But there is the factual understanding that a blood sample is going to be taken, my purse is going to be searched without understanding what this does to a person.

Q. Okay.

BY MR. LISENBY:

Q. Ms. Shevlin, I have just a few questions if I could. You said that, if I understood your statement, that a person can understand that a search is to be made without the consequences to himself?
A. Right.

Q. Now, can you explain what you're talking about?
A. Because one of the things that alcohol takes away much earlier than a .24 or a .289 is the appreciation of consequences of actions. The person can be very cooperative and say, yes, sir, search my purse, without realizing that this might not be the best -- in the best interest of the person. The person should say, no, you call me lawyer.

Q. Now, let me ask you this, now. I believe that the evidence in this would be -- it's a little bit further than just can I search your purse and they begin to search, in that there was a form read out to this individual. And I believe that we have that, do we not, Your Honor? Is that in evidence?

Let me show you. This is what has been marked previously as State's Exhibit Number 1. Just take a look at that for a minute if you would and just kind of briefly familiarize yourself with it.
A. I think that a person -- Well, this is very thorough. I think that a person at this level of intoxication would tune out a good bit of this.

Q. Okay.